

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 NEAE-00 SOE-02 AID-05 CEA-01
CIAE-00 COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10
INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-05 USIA-06
OES-07 SP-02 SS-15 STR-07 TRSE-00 ACDA-12 DOEE-00
/133 W

-----022532 291515Z /50

P R 291415Z MAR 78
FM AMEMBASSY KUWAIT
TO SECSTATE WASHDC PRIORITY 570
INFO AMEMBASSY LONDON

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E.O. 11652: N/A
TAGS: ENRG, KU
SUBJECT: AMINOIL ARBITRATION

REF: (A) KUWAIT 1496, (B) KUWAIT 1205 (NOTAL).

1. I MET WITH OIL MINISTER SHAIKH ALI KHALIFA AL-SABAH MARCH 29 AT HIS REQUEST TO DISCUSS AMINOIL ARBITRATION QUESTION.

2. OIL MINISTER BEGAN DISCUSSION BY DECLARING THAT GOK WAS NOT IN DISAGREEMENT WITH THE GENERAL PRINCIPLE OF ARBITRATION. IN FACT, IT LOOKED FORWARD TO AN ARBITRATION OF THE AMINOIL NATIONALIZATION BECAUSE IT FELT THAT AMINOIL OWED THE GOK MORE THAN ANY COMPENSATION TO WHICH IT MAY BE ENTITLED. THE GOK WOULD BE WILLING TO ACCEPT ANY DECISION WHICH RESULTED FROM A PROPER ARBITRATION.

3. DESPITE THIS POSITION, THE GOK WAS NOT PREPARED TO ENTER INTO THE ARBITRATION ARRANGEMENT PROPOSED BY
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AMINOIL UNDER ARTICLE 18 OF THE 1948 AGREEMENT. IT CONSIDERED THE CONDITIONS PRESCRIBED IN THIS ARTICLE AS NO LONGER IN EFFECT SINCE IT WOULD BRING THE MATTER UNDER UNITED KINGDOM JURISDICTION. THIS WAS DEFINITELY NOT ACCEPTABLE TO THE SOVERIGN GOVERNMENT OF KUWAIT. THE GOK DENIES ANY BRITISH JURISDICTION IN THIS MATTER AND WOULD IGNORE ANY DECISION REACHED THROUGH

THIS PROCESS.

4. HOWEVER, THE GOK IS WILLING TO ENTER INTO ARBITRATION UNDER A DIFFERENT SET OF RULES BASED ON PRINCIPLES OF ARBITRATION COMMONLY ACCEPTED BY NATIONS. ALI KHALIFA SAID THAT, IF THERE WERE ANY FLEXIBILITY IN THE AMINOIL POSITION, THE GOK WAS PREPARED TO LOOK INTO THE ESTABLISHMENT OF A SET OF ARBITRATION RULES ACCEPTABLE TO BOTH PARTIES.

5. THE OIL MINISTER STRESSED THAT THE GOK CONCERN IN THIS MATTER RELATES TO KUWAIT'S REPUTATION AND TO ITS FRIENDSHIP WITH THE US. THEREFORE, THIS AFFAIR COULD BE BETTER HANDLED IF AMINOIL COULD COME AND DISCUSS A REASONABLE METHOD OF ARBITRATION ACCEPTABLE TO BOTH SIDES.

6. I ASKED WHETHER THE ARBITRATION PROVISIONS CONTAINED IN THE 1973 AGREEMENT WITH AMINOIL (NOT RATIFIED BY KUWAIT NATIONAL ASSEMBLY) WOULD BE ACCEPTABLE. ALI KHALIFA DID NOT SEEM TO BE FAMILIAR WITH THEM SO I PROVIDED HIM WITH SOME EXCERPTS OF THE PROVISIONS FOR ARBITRATION IN THIS AGREEMENT. AFTER QUICKLY REVIEWING THEM, HE INDICATED THAT, SUBJECT TO AGREEMENT BY THE LAWYERS, ARBITRATION PROVISIONS SIMILAR TO THOSE I HAD SHOWED HIM MIGHT PROVIDE A BASIS FOR AGREEMENT.

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7. THE OIL MINISTER THEN ASKED ME TO CONVEY THIS INFORMATION TO THE DEPT. OF STATE, WHICH I AGREED TO DO. I SUGGESTED, AND HE AGREED, THAT I SHOULD REQUEST THE DEPT. TO INFORM AMINOIL OF THIS GOK POSITION. IN ORDER TO BE ABSOLUTELY SPECIFIC, I ASKED WHETHER THIS SHOULD BE CONSIDERED AN OFFER TO AMINOIL TO SEND REPRESENTATIVES ACCOMPANIED BY LEGAL ADVISORS TO DISCUSS THIS MATTER AND, IF APPROPRIATE, TO AGREE UPON AN ARBITRATION FORMULA ACCEPTABLE TO BOTH SIDES. ALI KHALIFA CONFIRMED THIS.

8. COMMENT: IT APPEARS THAT ALI KHALIFA'S EARLIER EXPRESSION OF WILLINGNESS TO CONSIDER ARBITRATION (REF. B) HAS BEEN ENDORSED BY THE GOK. KUWAIT IS CLEARLY UNWILLING TO ACCEPT 1948 AGREEMENT ARBITRATION PROCEDURE CURRENTLY BEING PURSUED BY AMINOIL, WHICH IS CONSIDERED AN INFRINGEMENT ON KUWAITI SOVEREIGNTY. FACT THAT OIL MINISTER AUTHORIZED TRANSMISSION OF THIS OFFER TO ARBITRATE TO THE DEPT. IS SIGNIFICANT, AND COULD SERVE TO SET VERY IMPORTANT PRECEDENT FOR FUTURE NATIONALIZATIONS OF AMERICAN PROPERTY IN THE ARAB WORLD AND IN OPEC COUNTRIES. I RECOMMEND THAT THE DEPT. ENCOURAGE AMINOIL TO DELAY THE NEXT STEP IN ITS ARBITRATION PROCEDURE, I.E., NOTIFICATION OF WILLINGNESS OF ARBITRATOR SELECTED BY

AMINOIL TO SERVE AS SOLE ARBITRATOR, AND RESPOND AFFIRMATIVELY
TO GOK OFFER TO CONSIDER ARBITRATION FORMULA ACCEPTABLE TO
BOTH PARTIES.

9. ACTION REQUESTED: DEPT. SHOULD COMMUNICATE GOK OFFER
TO FIND NEW ARBITRATION FORMULA TO AMINOIL VICE PRESIDENT
LARRY ISON OR FORMER PRESIDENT JACK SUNDERLAND THROUGH
AMINOIL NEW YORK HEADQUARTERS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARBITRATION, PETROLEUM INDUSTRY, DIPLOMATIC DISCUSSIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 29 mar 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978KUWAIT01840
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780136-0396
Format: TEL
From: KUWAIT
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780314/aaaaalrh.tel
Line Count: 124
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 171afebb-c288-dd11-92da-001cc4696bcc
Office: ACTION NEA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 78 KUWAIT 1496, 78 KUWAIT 1205
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3172402
Secure: OPEN
Status: NATIVE
Subject: AMINOIL ARBITRATION
TAGS: ENRG, KU, AMINOIL, (AL-SABAH, KHALIFA ALI)
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/171afebb-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014